

ASSEMBLY BILL

No. 1542

Introduced by Assembly Members Mathis and Cooley

April 23, 2015

An act to amend Section 139.2 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1542, as introduced, Mathis. Workers' compensation: neuropsychologists.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires the Administrative Director of the Division of Workers' Compensation to appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues, including medical doctors and osteopaths who meet specified requirements, including, among others, that the evaluator has successfully completed a residency training program accredited by the Accreditation Council for Graduate Medical Education. Existing law also provides that the requirements for a psychologist to be appointed as an evaluator include either being board certified in clinical psychology by a board recognized by the administrative director; holding a doctoral degree in psychology or a doctoral degree sufficient for licensure, and having at least 5 years of specified experience; or having at least 5 years of postdoctoral experience and having previously served as a medical evaluator.

This bill would provide that a medical doctor or osteopath who has successfully completed a residency program accredited by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation and is recognized by the administrative director would satisfy the residency training requirement. The bill would provide that a person who is certified in neuropsychology by specified boards or organizations and was appointed as a qualified medical evaluator in neuropsychology before January 1, 2015, or who is a clinical psychologist licensed to practice in the state, holds a doctoral degree in psychology, and has at least 2 years of specified experience and training, may be appointed by the administrative director as a qualified medical evaluator in neuropsychology.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 139.2 of the Labor Code is amended to
2 read:
3 139.2. (a) The administrative director shall appoint qualified
4 medical evaluators in each of the respective specialties as required
5 for the evaluation of medical-legal issues. The appointments shall
6 be for two-year terms.
7 (b) The administrative director shall appoint or reappoint as a
8 qualified medical evaluator a physician, as defined in Section
9 3209.3, who is licensed to practice in this state and who
10 demonstrates that he or she meets the requirements in paragraphs
11 (1), (2), (6), and (7), and, if the physician is a medical doctor,
12 doctor of osteopathy, doctor of chiropractic, or a psychologist, that
13 he or she also meets the applicable requirements in paragraph (3),
14 (4), or (5).
15 (1) Prior to his or her appointment as a qualified medical
16 evaluator, passes an examination written and administered by the
17 administrative director for the purpose of demonstrating
18 competence in evaluating medical-legal issues in the workers'
19 compensation system. Physicians shall not be required to pass an
20 additional examination as a condition of reappointment. A
21 physician seeking appointment as a qualified medical evaluator

1 on or after January 1, 2001, shall also complete prior to
2 appointment, a course on disability evaluation report writing
3 approved by the administrative director. The administrative director
4 shall specify the curriculum to be covered by disability evaluation
5 report writing courses, which shall include, but is not limited to,
6 12 or more hours of instruction.

7 (2) Devotes at least one-third of total practice time to providing
8 direct medical treatment, or has served as an agreed medical
9 evaluator on eight or more occasions in the 12 months prior to
10 applying to be appointed as a qualified medical evaluator.

11 (3) Is a medical doctor or doctor of osteopathy and meets one
12 of the following requirements:

13 (A) Is board certified in a specialty by a board recognized by
14 the administrative director and either the Medical Board of
15 California or the Osteopathic Medical Board of California.

16 (B) Has successfully completed a residency training program
17 accredited by the Accreditation Council for Graduate Medical
18 Education *or a predecessor organization recognized by the*
19 *administrative director*, or the osteopathic equivalent.

20 (C) Was an active qualified medical evaluator on June 30, 2000.

21 (D) Has qualifications that the administrative director and either
22 the Medical Board of California or the Osteopathic Medical Board
23 of California, as appropriate, both deem to be equivalent to board
24 certification in a specialty.

25 (4) Is a doctor of chiropractic and has been certified in California
26 workers' compensation evaluation by a provider recognized by
27 the administrative director. The certification program shall include
28 instruction on disability evaluation report writing that meets the
29 standards set forth in paragraph (1).

30 (5) Is a psychologist and meets one of the following
31 requirements:

32 (A) Is board certified in clinical psychology by a board
33 recognized by the administrative director.

34 (B) Holds a doctoral degree in psychology, or a doctoral degree
35 deemed equivalent for licensure by the Board of Psychology
36 pursuant to Section 2914 of the Business and Professions Code,
37 from a university or professional school recognized by the
38 administrative director and has not less than five years'
39 postdoctoral experience in the diagnosis and treatment of emotional
40 and mental disorders.

1 (C) Has not less than five years' postdoctoral experience in the
2 diagnosis and treatment of emotional and mental disorders, and
3 has served as an agreed medical evaluator on eight or more
4 occasions prior to January 1, 1990.

5 (D) *Is certified in clinical neuropsychology by the American*
6 *Board of Clinical Neuropsychology, the American Board of*
7 *Professional Neuropsychology, or another organization recognized*
8 *by the administrative director, or was appointed as a qualified*
9 *medical evaluator in neuropsychology before January 1, 2015. A*
10 *psychologist who meets the requirements of this subparagraph*
11 *may be appointed as a qualified medical evaluator in*
12 *neuropsychology.*

13 (E) *Is a clinical neuropsychologist licensed to practice*
14 *psychology in this state who has a doctoral degree in psychology*
15 *from an accredited university or college training program, has*
16 *completed an internship or its equivalent in a clinically relevant*
17 *area of professional psychology, and has at least two years of*
18 *experience and specialized training, at least one year of which is*
19 *at the post-doctoral level in the study and practice of clinical*
20 *neuropsychology and related neurosciences under the supervision*
21 *of a clinical neuropsychologist. A clinical neuropsychologist who*
22 *satisfies the requirements of this subparagraph may be appointed*
23 *as a qualified medical evaluator in neuropsychology.*

24 (6) Does not have a conflict of interest as determined under the
25 regulations adopted by the administrative director pursuant to
26 subdivision (o).

27 (7) Meets any additional medical or professional standards
28 adopted pursuant to paragraph (6) of subdivision (j).

29 (c) The administrative director shall adopt standards for
30 appointment of physicians who are retired or who hold teaching
31 positions who are exceptionally well qualified to serve as a
32 qualified medical evaluator even though they do not otherwise
33 qualify under paragraph (2) of subdivision (b). A physician whose
34 full-time practice is limited to the forensic evaluation of disability
35 shall not be appointed as a qualified medical evaluator under this
36 subdivision.

37 (d) (1) The qualified medical evaluator, upon request, shall be
38 reappointed if he or she meets the qualifications of subdivision (b)
39 and meets all of the following criteria:

40 (1)

1 (A) Is in compliance with all applicable regulations and
2 evaluation guidelines adopted by the administrative director.

3 ~~(2)~~

4 (B) Has not had more than five of his or her evaluations that
5 were considered by a workers' compensation administrative law
6 judge at a contested hearing rejected by the workers' compensation
7 administrative law judge or the appeals board pursuant to this
8 section during the most recent two-year period during which the
9 physician served as a qualified medical evaluator. If the workers'
10 compensation administrative law judge or the appeals board rejects
11 the qualified medical evaluator's report on the basis that it fails to
12 meet the minimum standards for those reports established by the
13 administrative director or the appeals board, the workers'
14 compensation administrative law judge or the appeals board, as
15 the case may be, shall make a specific finding to that effect, and
16 shall give notice to the medical evaluator and to the administrative
17 director. Any rejection shall not be counted as one of the five
18 qualifying rejections until the specific finding has become final
19 and time for appeal has expired.

20 ~~(3)~~

21 (C) Has completed within the previous 24 months at least 12
22 hours of continuing education in impairment evaluation or workers'
23 compensation-related medical dispute evaluation approved by the
24 administrative director.

25 ~~(4)~~

26 (D) Has not been terminated, suspended, placed on probation,
27 or otherwise disciplined by the administrative director during his
28 or her most recent term as a qualified medical evaluator.

29 ~~H~~

30 (2) *If* the evaluator does not meet any one of these criteria, the
31 administrative director may in his or her discretion reappoint or
32 deny reappointment according to regulations adopted by the
33 administrative director. A physician who does not currently meet
34 the requirements for initial appointment or who has been terminated
35 under subdivision (e) because his or her license has been revoked
36 or terminated by the licensing authority shall not be reappointed.

37 (e) The administrative director may, in his or her discretion,
38 suspend or terminate a qualified medical evaluator during his or
39 her term of appointment without a hearing as provided under

1 subdivision (k) or (l) whenever either of the following conditions
2 occurs:

3 (1) The evaluator's license to practice in California has been
4 suspended by the relevant licensing authority so as to preclude
5 practice, or has been revoked or terminated by the licensing
6 authority.

7 (2) The evaluator has failed to timely pay the fee required by
8 the administrative director pursuant to subdivision (n).

9 (f) The administrative director shall furnish a physician, upon
10 request, with a written statement of its reasons for termination of,
11 or for denying appointment or reappointment as, a qualified
12 medical evaluator. Upon receipt of a specific response to the
13 statement of reasons, the administrative director shall review his
14 or her decision not to appoint or reappoint the physician or to
15 terminate the physician and shall notify the physician of its final
16 decision within 60 days after receipt of the physician's response.

17 (g) The administrative director shall establish agreements with
18 qualified medical evaluators to ensure the expeditious evaluation
19 of cases assigned to them for comprehensive medical evaluations.

20 (h) (1) When requested by an employee or employer pursuant
21 to Section 4062.1, the medical director appointed pursuant to
22 Section 122 shall assign three-member panels of qualified medical
23 evaluators within five working days after receiving a request for
24 a panel. Preference in assigning panels shall be given to cases in
25 which the employee is not represented. If a panel is not assigned
26 within 20 working days, the employee shall have the right to obtain
27 a medical evaluation from any qualified medical evaluator of his
28 or her choice within a reasonable geographic area. The medical
29 director shall use a random selection method for assigning panels
30 of qualified medical evaluators. The medical director shall select
31 evaluators who are specialists of the type requested by the
32 employee. The medical director shall advise the employee that he
33 or she should consult with his or her treating physician prior to
34 deciding which type of specialist to request.

35 (2) The administrative director shall promulgate a form that
36 shall notify the employee of the physicians selected for his or her
37 panel after a request has been made pursuant to Section 4062.1 or
38 4062.2. The form shall include, for each physician on the panel,
39 the physician's name, address, telephone number, specialty, number
40 of years in practice, and a brief description of his or her education

1 and training, and shall advise the employee that he or she is entitled
2 to receive transportation expenses and temporary disability for
3 each day necessary for the examination. The form shall also state
4 in a clear and conspicuous location and type: ~~“You~~

5
6 “*You* have the right to consult with an information and assistance
7 officer at no cost to you prior to selecting the doctor to prepare
8 your evaluation, or you may consult with an attorney. If your claim
9 eventually goes to court, the workers’ compensation administrative
10 law judge will consider the evaluation prepared by the doctor you
11 select to decide your claim.”

12
13 (3) When compiling the list of evaluators from which to select
14 randomly, the medical director shall include all qualified medical
15 evaluators who meet all of the following criteria:

16 (A) He or she does not have a conflict of interest in the case, as
17 defined by regulations adopted pursuant to subdivision (o).

18 (B) He or she is certified by the administrative director to
19 evaluate in an appropriate specialty and at locations within the
20 general geographic area of the employee’s residence. An evaluator
21 shall not conduct qualified medical evaluations at more than 10
22 locations.

23 (C) He or she has not been suspended or terminated as a
24 qualified medical evaluator for failure to pay the fee required by
25 the administrative director pursuant to subdivision (n) or for any
26 other reason.

27 (4) When the medical director determines that an employee has
28 requested an evaluation by a type of specialist that is appropriate
29 for the employee’s injury, but there are not enough qualified
30 medical evaluators of that type within the general geographic area
31 of the employee’s residence to establish a three-member panel,
32 the medical director shall include sufficient qualified medical
33 evaluators from other geographic areas and the employer shall pay
34 all necessary travel costs incurred in the event the employee selects
35 an evaluator from another geographic area.

36 (i) The medical director appointed pursuant to Section 122 shall
37 continuously review the quality of comprehensive medical
38 evaluations and reports prepared by agreed and qualified medical
39 evaluators and the timeliness with which evaluation reports are
40 prepared and submitted. The review shall include, but not be

1 limited to, a review of a random sample of reports submitted to
2 the division, and a review of all reports alleged to be inaccurate
3 or incomplete by a party to a case for which the evaluation was
4 prepared. The medical director shall submit to the administrative
5 director an annual report summarizing the results of the continuous
6 review of medical evaluations and reports prepared by agreed and
7 qualified medical evaluators and make recommendations for the
8 improvement of the system of medical evaluations and
9 determinations.

10 (j) After public hearing pursuant to Section 5307.3, the
11 administrative director shall adopt regulations concerning the
12 following issues:

13 (1) (A) Standards governing the timeframes within which
14 medical evaluations shall be prepared and submitted by agreed
15 and qualified medical evaluators. Except as provided in this
16 subdivision, the timeframe for initial medical evaluations to be
17 prepared and submitted shall be no more than 30 days after the
18 evaluator has seen the employee or otherwise commenced the
19 medical evaluation procedure. The administrative director shall
20 develop regulations governing the provision of extensions of the
21 30-day period in both of the following cases:

22 (i) When the evaluator has not received test results or consulting
23 physician's evaluations in time to meet the 30-day deadline.

24 (ii) To extend the 30-day period by not more than 15 days when
25 the failure to meet the 30-day deadline was for good cause.

26 (B) For purposes of subparagraph (A), "good cause" means any
27 of the following:

28 (i) Medical emergencies of the evaluator or evaluator's family.

29 (ii) Death in the evaluator's family.

30 (iii) Natural disasters or other community catastrophes that
31 interrupt the operation of the evaluator's business.

32 (C) The administrative director shall develop timeframes
33 governing availability of qualified medical evaluators for
34 unrepresented employees under Section 4062.1. These timeframes
35 shall give the employee the right to the addition of a new evaluator
36 to his or her panel, selected at random, for each evaluator not
37 available to see the employee within a specified period of time,
38 but shall also permit the employee to waive this right for a specified
39 period of time thereafter.

1 (2) Procedures to be followed by all physicians in evaluating
2 the existence and extent of permanent impairment and limitations
3 resulting from an injury in a manner consistent with Sections 4660
4 and 4660.1.

5 (3) Procedures governing the determination of any disputed
6 medical treatment issues in a manner consistent with Section
7 5307.27.

8 (4) Procedures to be used in determining the compensability of
9 psychiatric injury. The procedures shall be in accordance with
10 Section 3208.3 and shall require that the diagnosis of a mental
11 disorder be expressed using the terminology and criteria of the
12 American Psychiatric Association's Diagnostic and Statistical
13 Manual of Mental Disorders, Third Edition-Revised, or the
14 terminology and diagnostic criteria of other psychiatric diagnostic
15 manuals generally approved and accepted nationally by
16 practitioners in the field of psychiatric medicine.

17 (5) Guidelines for the range of time normally required to perform
18 the following:

19 (A) A medical-legal evaluation that has not been defined and
20 valued pursuant to Section 5307.6. The guidelines shall establish
21 minimum times for patient contact in the conduct of the
22 evaluations, and shall be consistent with regulations adopted
23 pursuant to Section 5307.6.

24 (B) Any treatment procedures that have not been defined and
25 valued pursuant to Section 5307.1.

26 (C) Any other evaluation procedure requested by the Insurance
27 Commissioner, or deemed appropriate by the administrative
28 director.

29 (6) Any additional medical or professional standards that a
30 medical evaluator shall meet as a condition of appointment,
31 reappointment, or maintenance in the status of a medical evaluator.

32 (k) (1) Except as provided in this subdivision, the administrative
33 director may, in his or her discretion, suspend or terminate the
34 privilege of a physician to serve as a qualified medical evaluator
35 if the administrative director, after hearing pursuant to subdivision
36 (l), determines, based on substantial evidence, that a qualified
37 medical evaluator:

38 (1)

39 (A) Has violated any material statutory or administrative duty.

40 (2)

1 (B) Has failed to follow the medical procedures or qualifications
2 established pursuant to paragraph (2), (3), (4), or (5) of subdivision
3 (j).

4 ~~(3)~~

5 (C) Has failed to comply with the timeframe standards
6 established pursuant to subdivision (j).

7 ~~(4)~~

8 (D) Has failed to meet the requirements of subdivision (b) or
9 (c).

10 ~~(5)~~

11 (E) Has prepared medical-legal evaluations that fail to meet the
12 minimum standards for those reports established by the
13 administrative director or the appeals board.

14 ~~(6)~~

15 (F) Has made material misrepresentations or false statements
16 in an application for appointment or reappointment as a qualified
17 medical evaluator.

18 ~~A~~

19 (2) A hearing shall not be required prior to the suspension or
20 termination of a physician's privilege to serve as a qualified
21 medical evaluator when the physician has done either of the
22 following:

23 (A) Failed to timely pay the fee required pursuant to subdivision
24 (n).

25 (B) Had his or her license to practice in California suspended
26 by the relevant licensing authority so as to preclude practice, or
27 had the license revoked or terminated by the licensing authority.

28 (I) The administrative director shall cite the qualified medical
29 evaluator for a violation listed in subdivision (k) and shall set a
30 hearing on the alleged violation within 30 days of service of the
31 citation on the qualified medical evaluator. In addition to the
32 authority to terminate or suspend the qualified medical evaluator
33 upon finding a violation listed in subdivision (k), the administrative
34 director may, in his or her discretion, place a qualified medical
35 evaluator on probation subject to appropriate conditions, including
36 ordering continuing education or training. The administrative
37 director shall report to the appropriate licensing board the name
38 of any qualified medical evaluator who is disciplined pursuant to
39 this subdivision.

1 (m) The administrative director shall terminate from the list of
2 medical evaluators any physician where licensure has been
3 terminated by the relevant licensing board, or who has been
4 convicted of a misdemeanor or felony related to the conduct of his
5 or her medical practice, or of a crime of moral turpitude. The
6 administrative director shall suspend or terminate as a medical
7 evaluator any physician who has been suspended or placed on
8 probation by the relevant licensing board. If a physician is
9 suspended or terminated as a qualified medical evaluator under
10 this subdivision, a report prepared by the physician that is not
11 complete, signed, and furnished to one or more of the parties prior
12 to the date of conviction or action of the licensing board, whichever
13 is earlier, shall not be admissible in any proceeding before the
14 appeals board nor shall there be any liability for payment for the
15 report and any expense incurred by the physician in connection
16 with the report.

17 (n) A qualified medical evaluator shall pay a fee, as determined
18 by the administrative director, for appointment or reappointment.
19 These fees shall be based on a sliding scale as established by the
20 administrative director. All revenues from fees paid under this
21 subdivision shall be deposited into the Workers' Compensation
22 Administration Revolving Fund and are available for expenditure
23 upon appropriation by the Legislature, and shall not be used by
24 any other department or agency or for any purpose other than
25 administration of the programs of the Division of Workers'
26 Compensation related to the provision of medical treatment to
27 injured employees.

28 (o) An evaluator shall not request or accept any compensation
29 or other thing of value from any source that does or could create
30 a conflict with his or her duties as an evaluator under this code.
31 The administrative director, after consultation with the Commission
32 on Health and Safety and Workers' Compensation, shall adopt
33 regulations to implement this subdivision.

34 SEC. 2. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety within
36 the meaning of Article IV of the Constitution and shall go into
37 immediate effect. The facts constituting the necessity are:

38 The Administrative Director of the Division of Workers'
39 Compensation has begun the regulatory process to abolish the
40 recognition of neuropsychologists as Qualified Medical Evaluators

1 in the workers' compensation system based on the division's
2 interpretation of Section 139.2 of the Labor Code. In order to
3 permit injured workers to continue to receive medical-legal
4 evaluation services from neuropsychologists in appropriate cases,
5 it is necessary for this act to take effect immediately.

O